IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4010 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

VISHNUBHAI M PATEL & 3 - Petitioner(s)
Versus
MAHESANA DISTRICT PANCHAYAT & 14 - Respondent(s)

==========

Appearance :
MR KG VAKHARIA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 2,2.2.3
MR PRAKASH K JANI for Respondent(s) : 2.2.1, 2.2.2,2.2.3
M/S NJ MEHTA ASSO. for Respondent(s) : 3 - 15.

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 21/07/2006

ORAL JUDGMENT

1 This petition under Article 226 of the Constitution of India seeks the following reliefs :

> *"(A) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be granted quashing and setting aside the select list dated 3rd August, 1987 for Gram Sevaks (multi-purpose) for Mehsana District Panchayat, Mehsana, and that the names of the petitioners and the persons mentioned in the List Annexure A may kindly be directed to be included in the select list on the basis of the total marks obtained by them at the written examination and oral interview".*

2 Heard learned Advocates appearing for the petitioners and the respective respondents.

3 The case of the petitioners (in all totaling 19) is that they are entitled to be selected for the post of Gramsevaks (multi-purpose) for being absorbed by Mehsana District Panchayat, Mehsana; that the list prepared on 3.8.1987 is based on erroneous modality adopted by the respondent authorities. Elaborating on the same it was submitted that the petitioners have obtained more than 85% marks at the written examination, but on the basis of their

performance at the oral interview, the petitioners have not been placed in the select list; in case, the marks of the written test and the oral interview are aggregated the petitioners would become entitled to be placed in the select list above those who are already included in the select list. An incidental submission is that, the selected candidates contain names of candidates who have secured 70% to 73% marks at the written test. That the advertisement issued for inviting applications did not contain any mention as to any interview to be held and hence the entire process is vitiated.

4 On behalf of the respondent authorities attention was invited to the affidavit-in-reply, with special reference to paragraph No. 5 onwards to submit that the procedure which formed the basis for selection was in accordance with the rules and the instructions issued under Gujarat Panchayat Service Selection Board (Functions) Rules,1964 by the Board. The averments made by the petitioners have been categorically denied. It is specifically stated that any candidate expecting to be selected in the select list is in the first instance required to clear the written examination as well as oral interview and merely passing at one, even with higher percentage, would not be sufficient. The details as to the total number of candidates who applied, who appeared at the written examination and who were invited for oral interview have been placed on record. The modality of assessing a candidate at the oral interview has also been stated in the reply affidavit. It is stated that for passing at the oral interview a candidate has to obtain minimum 04 marks out of total 10 marks kept for oral interview.

5 It has been specifically stated that none of the petitioners have obtained 04 marks out of 10 at the oral interview. It is further denied that the petitioners had secured more than 85% marks at the written examination. Lastly it is stated that the aggregate marks obtained by many of the candidates is less than the aggregate marks of the last candidate in the select list belonging to non-reserved category.

6 In this context the following statement made on behalf of the respondent authority has been recorded by the Court on 8.9.1987 :

> *"In response to the query put by the Court, Mr.M.S.Shah, learned Counsel for the respondents, states that even if the contentions raised by the petitioners are accepted and select list is prepared on the basis of the aggregate marks, the petitioners would not come within first 21 candidates on the select list. Mr.Shah submits that candidates at Sr.Nos.22, 23 and 24 have equal marks and if the select list is prepared on the basis of aggregate marks, petitioner No.3 Haresh C.Shukla would get the same marks as the candidates at Sr.Nos.22, 23 and 24. Therefore, even if the select list is prepared on the basis of the aggregate marks, the candidates upto Sr.No. 24 would be entitled to be included in the select list. Mr.Shah further*

submits that the candidates at Sr.Nos. 31, 32, 33 and 34 of the select list belong to reserved categories".

7 In light of the aforesaid position it is not possible to come to the conclusion that the modality and the manner of preparing select list suffers from any such fundamental error so as to render the entire select list illegal or void. Nor is it possible to state that the method adopted for preparation of select list is arbitrary in any manner. As to what should be the minimum marks that a candidate should obtain is always the prerogative of the establishment while finalising the norms and it is not the function of the Court to substitute the same.

8 In the result, in exercise of extra- ordinary discretionary jurisdiction under Article 226 of the Constitution it is not possible to undertake re-appreciation of evidence. The petition is accordingly rejected. Rule discharged with no order as to costs. Interim relief stands vacated.

(D.A.MEHTA, J.)

m.m.bhatt